



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

# MICHIGAN LAW REVIEW

---

VOL. XIX.

MAY, 1921

No. 7

---

## THE COURT OF INDUSTRIAL RELATIONS IN KANSAS.

**M**OST of the articles which have heretofore appeared in print in reference to the new Court of Industrial Relations in Kansas have been taken up with such matters as the nationality of Alexander Howat, president of the Kansas district of the United Mine Workers, the cost and frequency of strikes among miners, the ideals of Governor Henry J. Allen and others responsible for the creation of the new Court and the like. But little has found its way into print in the way of an exact analysis of the jurisdiction, powers and methods of procedure of this tribunal. Such an analysis is attempted in this article.

### ORIGIN OF COURT

On November 1, 1919, a nation wide strike of coal miners in the bituminous coal fields began. Very soon thereafter in Kansas, the state, through a receivership ordered by the Supreme Court, took charge of the mines and attempted to operate them, with the assistance of a large force of volunteers, while National Guardsmen preserved order in the small district affected. The next step was a proclamation by the Governor on December 8, 1919, calling an extra session of the Legislature to convene on January 5, 1920, for the purpose of giving consideration to industrial relations. With but very slight delay, the Legislature at this special session enacted the measure creating the Court of Industrial Relations, which became a part of the Kansas statute law on January 24, 1920.

### PROVISIONS OF STATUTE

The act creating the Court of Industrial Relations is quite brief, covering but eleven small pages in large type.

The first section creates the Court of Industrial Relations, to be composed of three judges to be appointed by the Governor, with the advice and consent of the Senate. The salary of each is fixed at \$5,000, the normal term of office at three years, one judge to retire each year.

The second section confers upon the new Court all the powers of the old Public Utilities Commission, which is abolished. It may be added, however, that, at the regular session of the Legislature in 1921, these two bodies were divorced and the Public Utilities Commission re-created.

The third section of the original act declares the following industries to be affected with a public interest and subject to the supervision by the state, namely: The production, in any stage of the process, of food products, or wearing apparel; the production of fuel for domestic, manufacturing or transportation purposes; the transportation of any of the aforesaid articles; all public utilities and common carriers; together with all persons and corporations engaged in such industries. The next section gives the Court "full power, authority and jurisdiction to supervise, direct and control the operation" of the industries enumerated.

The fifth section gives the Court full power to

"adopt all reasonable and proper rules and regulations to govern its proceedings, the service of process, to administer oaths, and to regulate the mode and manner of all its investigations, inspections and hearings: Provided, however, That in the taking of testimony the rules of evidence, as recognized by the supreme court of the state of Kansas in original proceedings therein, shall be observed by said Court of Industrial Relations."

The sixth section declares it

"to be necessary for the public peace, health, and general welfare of the people of this state that the industries, employments, public utilities and common carriers herein specified shall be operated with reasonable continuity and efficiency in order that the people of this state may live in peace and security, and be supplied with the necessities of life. No person, firm, corporation, or association of persons shall in any manner or to any extent, wilfully hinder, delay, limit or sus-

pend such continuous and efficient operation for the purpose of evading the purpose and intent of the provisions of this act; nor shall any person, firm, corporation, or association of persons do any act or neglect or refuse to perform any duty herein enjoined with the intent to hinder, delay, limit or suspend such continuous and efficient operation as aforesaid, except under the terms and conditions provided by this act."

The seventh section provides that,

"if it shall appear to said Court of Industrial Relations that said controversy may endanger the continuity or efficiency of service of any of said industries, employments, public utilities or common carriers, or affect the production of transportation of the necessities of life affected or produced by said industries or employments, or produce industrial strife, disorder or waste, or endanger the orderly operation of such industries, employments, public utilities or common carriers, and thereby endanger the public peace or threaten the public health, full power, authority and jurisdiction are hereby granted to said Court of Industrial Relations, upon its own initiative, to summon all necessary parties before it and to investigate said controversy, and to make such temporary findings and orders as may be necessary to preserve the public peace and welfare and to preserve and protect the status of the parties, property and public interests involved pending said investigations, and to take evidence and to examine all necessary records, and to investigate conditions surrounding the workers, and to consider the wages paid to labor and the return accruing to capital, and the rights and welfare of the public, and all other matters affecting the conduct of said industries, employments, public utilities or common carriers, and to settle and adjust all such controversies by such findings and orders as provided in this act."

In such cases, proceedings may also be instituted by ten citizen taxpayers in the community affected, or upon complaint by the Attorney-General.

Section eight reads:

"The Court of Industrial Relations shall order such changes, if any, as are necessary to be made in and about the

conduct of said industry, employment, utility or common carrier, in the matters of working and living conditions, hours of labor, rules and practices, and a reasonable minimum wage, or standard of wages, to conform to the findings of the court in such matters, as provided in this act, and such orders shall be served at the same time and in the same manner as provided for the service of the court's findings in this act: Provided, all such terms, conditions and wages shall be just and reasonable and such as to enable such industries, employments, utilities or common carriers to continue with reasonable efficiency to produce or transport their products or continue their operations and thus to promote the general welfare."

Orders in this connection when made by the Court, "shall continue for such reasonable time as may be fixed by said Court, or until changed by agreement of the parties with the approval of the Court." After sixty days, either party may apply to the Court for the modification of such orders.

Section nine must be reproduced in full.

"It is hereby declared necessary for the promotion of the general welfare that workers engaged in any of said industries, employments, utilities or common carriers shall receive at all times a fair wage and have healthful and moral surroundings while engaged in such labor; and that capital invested therein shall receive at all times a fair rate of return to the owners thereof. The right of every person to make his own choice of employment and to make and carry out fair, just and reasonable contracts and agreements of employment, is hereby recognized. If, during the continuance of any such employment, the terms or conditions of any such contract or agreement hereafter entered into, are by said court, in any action or proceeding properly before it under the provisions of this act, found to be unfair, unjust or unreasonable, said Court of Industrial Relations may by proper order so modify the terms and conditions thereof so that they will be and remain fair, just and reasonable and all such orders shall be enforced as in this act provided."

Section ten makes provision for service of notices of proceedings;

section eleven for the employment of experts and other employees; section twelve provides a review of the Court's orders by the State Supreme Court; section thirteen provides for interference by the ordinary Courts with the orders of the Industrial Court only within thirty days from the time of the service of such orders.

Section fourteen allows both incorporated and unincorporated unions or associations of workers to appear before the Court as "legal entities." If unincorporated, such association may appoint one of its officers as its agent or trustee, "with authority to enter into such collective bargains and to represent each and every of said individuals in all matters relating thereto."

Section fifteen makes it unlawful to discriminate against any person who invokes the aid of the Court, or who assists the Court in settling any controversy, while section sixteen, in brief, makes "lock-outs," or shut-downs for the purpose of curtailing production and boosting prices unlawful, though meritorious applications for limiting or ceasing operations may be granted by the Court.

Section seventeen makes it unlawful to fail or refuse to perform any act or duty enjoined by the act, and, while recognizing the right of an individual workman to quit his employment, makes it "unlawful for any such individual \* \* \* to conspire with other persons," to strike, or for any individual to engage in "picketing."

Section eighteen provides punishment by a fine not to exceed \$1,000, or by imprisonment not to exceed one year in the county jail, or both, for the ordinary mortal, while section nineteen raises the maximum to \$5,000 fine and two years in the penitentiary for an officer of a corporation or labor union or association, upon conviction in a court of competent jurisdiction of a willful violation of the act.

Section twenty allows the Court to take over and operate any essential industry when necessary for the public welfare, while section twenty-one allows labor controversies even in non-essential industries to be referred for settlement to the Court. Section twenty-two makes provision for commissioners to take testimony. Section twenty-four makes orders for wage increases or reductions retroactive to the commencement of the proceedings. Section twenty-four allows the Court, with the consent of the Governor, to make investigations within the state or elsewhere into industrial problems. The other provisions of the act are not of importance for our pur-

pose, with the possible exception of the provision in section twenty-seven, which casts all expenses incident to the operation of the Court, not on the parties litigant, but upon legislative appropriations.

#### GOVERNOR ALLEN'S PLAN

In his message to the special session of the legislature, Governor Allen stated :

"It seems to me that legislation is imperatively needed and should be immediately enacted :—

"1. Declaring the operation of the great industries affecting food, clothing, fuel and transportation to be impressed with a public interest and subject to reasonable regulation by the state.

"2. Creating a strong, dignified tribunal, vested with power, authority and jurisdiction to hear and determine all controversies which may arise and which threaten to hinder, delay or suspend the operation of such industries.

"3. Declaring it to be the duty of all persons, firms, corporations and associations of persons engaged in such industries to operate the same with reasonable continuity, in order that the people of this state may be supplied at all times with the necessities of life.

"4. Providing that in case of controversy arising between employers and employees or between different groups or crafts of workers which may threaten the continuity or efficiency of such industries and thus the production or transportation of the necessities of life, or which may produce an industrial strife or endanger the peaceful operation of such industries, it shall be the duty of said tribunal, on its own initiative or on the complaint of either party, or on the complaint of the attorney-general, or on complaint of citizens, to investigate and determine the controversy and to make an order prescribing rules and regulations, hours of labor, working conditions, and a reasonable minimum wage, which shall thereafter be observed in the conduct of said industry until such time as the parties may agree.

"5. Providing for the incorporation of unions or associa-

tions of workers, recognizing the right of collective bargaining and giving full faith and credit to any and all contracts made in pursuance of said right.

"6. Providing for a speedy determination of the validity of any such order made by said tribunal in the supreme court of this state without the delay which so often hampers the administration of justice in ordinary cases.

"7. Declaring it unlawful for any person, firm, corporation or association of persons to delay or suspend the production or transportation of the necessities of life, except upon application to and order of said tribunal.

"8. Declaring it unlawful for any person, firm, or corporation to discharge or discriminate against any employee because of the participation of such employee in any proceedings before said tribunal.

"9. Making it unlawful for any person, firm, or corporation engaged in said lines of industries to cease operations for the purpose of limiting production, to affect prices or to avoid any of the provisions of this act, but also providing a means by which proper rules and regulations may be formulated by said tribunal providing for the operation of such industries as may be affected by changes in season, market conditions, or other reasons or causes inherent in the nature of the business.

"10. Declaring it unlawful for any person, firm or corporation or for any association of persons to violate any of the provisions of this act, or to conspire or confederate with others to violate any provisions of this act, or to intimidate any person, firm or corporation engaged in such industries with the intent to hinder, delay or suspend the operation of such industries and thus to hinder, delay, or suspend the production or transportation of the necessities of life.

"11. Providing penalties by fine or imprisonment, or both, for persons, firms, or corporations or associations of persons willfully violating the provisions of this act.

"12. Making provisions whereby any increase of wages granted to labor by said tribunal shall take effect as of the date of the beginning of the investigation.



"By means of such legislation I believe we will be able:—

"1. To make strikes, lockouts, boycotts and blacklists unnecessary and impossible, by giving labor as well as capital an able and just tribunal in which to litigate all controversies.

"2. To insure to the people of this state, at all times, an adequate supply of those products which are absolutely necessary to the sustaining of the life of civilized peoples.

"3. That by stabilizing production of these necessities we will also, to a great extent, stabilize the price to the producer as well as the consumer.

"4. That we will insure to labor steadier employment, at a fairer wage, under better working conditions.

"5. That we will prevent the colossal economic waste which always attends industrial disturbances.

"6. That we will make the law respected, and discourage and ultimately abolish intimidation and violence as a means for the settlement of industrial disputes."

#### EFFECT OF ACT

One of the first questions which occurs to the lawyer, upon examining the Act, naturally is, Is it constitutional? This has not yet been determined, except as to a few minor details which were upheld by the Kansas Supreme Court. The decision in *State v. Howat*<sup>1</sup> by no means determines the constitutionality of those portions of the act which are most significant. The court expressly declares, "It would be utterly futile in a proceeding, the sole purpose of which is to require obedience to a subpoena, to undertake to determine in detail the effect and validity of the various provisions of the statute attacked." It would be equally futile and inadvisable in the present article to attempt to forecast the ultimate decision on these questions which must certainly be passed upon, eventually, by the United States Supreme Court. At all events, if the act is constitutional in its entirety, it means that in the industries enumerated, at least, the Court may be empowered to fix the hours of labor, minimum wage even for adult males and set at naught any contracts made between employer and employee on such matters, when, in the estimation of the Court, such contracts become unfair, unjust or unreasonable,

---

<sup>1</sup> 107 Kansas, 423.

and this the Court may do, either of its own motion upon the complaint of the Attorney-General, or even of ten citizen taxpayers in the community in which the industry is located. Moreover, in such industries, strikes, lockouts and picketing may be made criminal. This appears to be the first attempt of any State to fix a minimum wage for adult males.<sup>2</sup>

Is the measure progressive or reactionary? At first glance, the answer appears to be that it is both. In so far as it attempts to regulate working conditions, hours of labor and wages by the will of a tribunal instead of leaving the matter to the will of the employer, or to be fought over by employer and employee, the act may be classed as progressive, in the sense that it is in line with similar measures in Australia, New Zealand and other communities considered "advanced". But in so far as the act makes striking a crime, it may be suggested that we are taken back at least to the English Combinations Act of 1800, which made striking a crime and also attempted, like the Kansas Act, to protect the workmen from concerted action by employers and provided for the arbitration of disputes between "masters and workmen".<sup>3</sup> The fundamental notion of a settlement of labor disputes by an impartial tribunal can hardly be deemed new or novel. "Statutory provision for the settlement of labor disputes by regular tribunals with power to enforce their awards has existed ever since the middle of the Fourteenth century".<sup>4</sup> In other words, before Columbus discovered America, the essential element in the Kansas Act had come to light. Moreover, in the course of the nineteenth century, the right of workmen to strike, at least for the purpose of obtaining a definite increase in wages, seemed to have become established in practically every state in the Union, as well as in England. Hence, the Kansas Act appears to be a move in two opposite directions. But why are strikes made criminal, and why are the men compelled to submit to adjudication? Because of the public interest at stake. It is in the frank recognition of the paramount importance of what Governor Allen has referred to as the submerged nine-tenths of society that the act parts company with earlier measures which sought to bring master and workman together by squeezing still

---

<sup>2</sup> 10 MONTHLY LABOR REVIEW 808.

<sup>3</sup> STAT. 40 GEORGE III, chapter 106.

<sup>4</sup> PALGRAVE, DICTIONARY OF POLITICAL ECONOMY, Vol. 3, page 481.

more the great bulk of society looked upon as outsiders, though really the men who "paid the freight."

One phase of the new Act has caused much discussion, but need be merely noted in passing. Should the members of the Industrial Court be appointed by the Governor, or elected by the people? This question is much the same as that in reference to the election or appointment of the members of courts of general jurisdiction, heads of governmental departments and the like and its discussion in this article would take us too far adrift.

It is insisted by Governor Allen that the new Court is not a court of arbitration, but a court of justice.<sup>5</sup> So also, Professor William R. Vance makes this distinction: "It will be noted that the function of arbitration is to arrive at a compromise, supported so far as possible by considerations of justice and reason, which dangerous antagonists can be induced to accept in preference to the losses and uncertainties of open conflict, while adjudication consists in the determination by an impartial tribunal of issues presented in accordance with established rules. A compromise award is a partial defeat for both of the contestants, and satisfies neither. In fact, it is apt to be determined according to the existing strength of the contestants, while an adjudication is supposed to proceed upon certain fixed principles that take no account of the relative strength of the parties. The contestant who refuses to abide by the award of arbitrators merely breaks his contract and sets his judgment against that of the arbitrators, while the party who refuses to submit to a judgment of a Court is defying the state."<sup>6</sup>

If arbitration at its best is what Professor Vance says of it, no one would wish to use it in the settlement of industrial disputes. If it means that two dangerous antagonists are to confront each other before three men who will be controlled in making their decision by the strength of the antagonists, without regard to fixed principles, and that, after all the expense incident to the hearing of evidence, and possibly the resort to various tests to determine the relative strength of the combatants, a compromise award which satisfies nobody is arrived at, the case of arbitration is indeed a sad one. But is the difference between arbitration and adjudication so great as this?

---

<sup>5</sup> REVIEW OF REVIEWS, Vol. 61, page 597.

<sup>6</sup> YALE LAW JOURNAL, Volume 30, page 468.

"Arbitration at common law was but a judicial investigation out of court."<sup>7</sup> "An arbitration is a judicial proceeding, and the arbitrators are bound to exercise a high degree of judicial impartiality."<sup>8</sup> It is submitted that the one important distinction between arbitration and adjudication lies in the fact that arbitrators are generally selected by the parties themselves, aside from the odd member chosen by the other arbitrators, while judges are generally selected in some other manner. But even this distinction is open to question, when it is recalled that the judges in our ordinary courts are sometimes selected by the litigants themselves.<sup>9</sup> As to arbitration's resulting in a compromise, unsatisfactory to either side, does not the same thing happen every day in lawsuits? And is there anything to prevent arbitrators from deciding wholly for one side or the other?

As to the difference between an award and an adjudication it has been suggested that a contestant who refuses to abide by an award merely breaks a contract, while disobedience to a judgment is a defiance of the state. This proposition also is of limited, rather than universal application. In many jurisdictions, by statute, an award of arbitrators is given the force of a verdict of a jury and judgment may be entered upon it, without the necessity of suit.<sup>10</sup> Moreover, in many instances, the court of equity will enforce an award of arbitrators by a decree of specific performance, supported by the usual penalties.<sup>11</sup> On the other hand, the defiance of the state in the case of failure to comply with many a judgment, as for example, a simple money judgment, is but slight.

Has an adjudication the advantage of arbitration in that the latter is apt to turn on the strength of the contestants? If we dismiss from our consideration the kind of might which results from right, and look upon strength and might as matters of mere force, it is hardly necessary to point out that an adjudication based upon the strength of the parties is an unadulterated miscarriage of justice, as for example, when the jury's verdict is rendered through fear of a mob

---

<sup>7</sup> *People v. Board of Supervisors*, 15 N. Y. Supp. 750.

<sup>8</sup> *Produce Co. v. Norwich Fire Ins. Co.*, 91 Minn. 212.

<sup>9</sup> See *Alabama & F. R. Co. v. Burket*, 42 Ala. 83; *Henderson v. Pope*, 39 Ga. 361; *Salter v. Salter*, 69 Ky. 624; *Castles v. Burney*, 34 Tex. 470.

<sup>10</sup> See *Anderson v. Beebe*, 22 Kansas 768; *Morville v. American Tract Society*, 123 Mass. 129; *Willesford v. Watson*, L. R. 8 Ch. 473.

<sup>11</sup> *Guild v. Santa Fe R. Co.*, 57 Kan. 70; *Jones v. Boston Mill Co.*, 4 Pick. (Mass.) 507.

known to be right outside of the court house. But is not the same thing equally true in the case of arbitration? Arbitration which admittedly takes into account the strength of the contestants would be but a mockery of justice, merely a form of legalized tyranny.

The last point in reference to the distinction between arbitration and adjudication is perhaps of greatest significance, namely, that an adjudication is based on fixed principles or established rules. It is undoubtedly the case that where arbitration boards are merely ephemeral, their findings will have no more element of permanency or precedent than verdicts of juries. But whenever a permanent board, shop committee, impartial chairman or other tribunal becomes established in any field, it is submitted that precedents which will be followed and rules which will be acquiesced in, must in the very nature of things arise. Hence, it is not surprising but is rather a matter of course that, with the increase in the number of settlement of disputes between employers and employees by various petty tribunals, a system of industrial jurisprudence is developing. It may take a long time for the various theories of wages and distribution of wealth to crystallize into a definite body of rules, but such a system is now in process of development and it will not be long before some enterprising publishing house or philanthropic or governmental agency will see the necessity of collecting, indexing and digesting this material.<sup>12</sup> However, for the present, it must be admitted that the Kansas Court will not have a great deal in the way of thoroughly settled rules to guide it in its manifold fields. After centuries of accumulation of common law precedents, it is still an every day occurrence to find no precedent which will exactly fit a case before us. Moreover, we can hardly hope for the development of an industrial jurisprudence without interference and modification, from time to time, by legislative enactments. For example, if it is finally decided that it is constitutional for the Kansas Industrial Court to fix the minimum wage of day laborers at, say, a dollar and a half a day, what is to prevent the State legislature at its next session from raising it to two dollars? Let us but recall the "two cents a mile" statutes in spite of the creation of public utilities commissions to attend to this very matter.

A significant provision, in this connection, has already been noted

---

<sup>12</sup> See "The Development of Industrial Justice," by Morris L. Ernst, 21 COLUMBIA LAW REVIEW 155.

in the Act in section five, which limits the court in the taking of testimony to the rules of evidence recognized by the Supreme Court. Is such a limitation necessary or desirable? Moreover, can we arrive at the foundation stones of industrial justice within the confines of the rules of Greenleaf and Wigmore? If the answer be in the negative, we are equally perplexed if we attempt to suggest any alternative restrictions, or try to imagine the consequences of throwing aside all limitations upon the letting in of testimony, thus giving a day, or perhaps many days in court, to every personage who evolves a new theory or doctrine of wages, or "philosophy" in reference to the rights and duties of master and workman.

The need for an impartial tribunal representing the public rather than the contestants, as in the case of arbitrators, varies somewhat with the character of the essential industry covered by the Act. In the case of a natural monopoly, as for example, the street car lines of a particular city, it is obvious that a fight between employers and employees may result in a victory for both by a boost in both car fares and wages. But this is not true in the case of such an industry as flour milling in Topeka. Here, the competition of interstate commerce prevents the raising of the price of the product to any great extent. Hence, the one important question of distribution is: how much of the market price of the flour shall go to the employer, and how much to the employee? The public need not worry so long as it can get its flour in Missouri. The Court cannot fix the price. But in the case of a nation wide tie-up, such as the coal strike, this alternative is of little value.

Of how great significance is this new Kansas law? On the one hand, it may be contended that it is not a violent departure from established modes of operating, that the new Court is but one logical step after the creation of public utilities commissions and the use of voluntary arbitration. Moreover, the new Act does not destroy competition. Men may still quit singly or in groups provided the quitting does not amount to striking. While possibly three-fourths of all Kansas industries fall within the territory of the essential, there is still room for strikes and lockouts in the other fourth and jobs may be obtained even in the essential industries a step over the state line. Many persons, especially trades unionists, insist that no law can stop strikes. We may hope they are wrong, but whether or not this Act can do it effectively, nothing but time and experiment

will prove. Moreover, it is urged that Kansas is no better place for testing industrial innovations than Chicago would be for trying out a new mountain-climbing apparatus. In but a small spot in the southeast, and there only in the coal fields, do we find in Kansas highly organized and belligerent trade unions. Elsewhere and in other industries, trade unionism has no stronghold. The average farmer has but one or two farm hands, or none at all, and these spend but little time in organizing unions, and are much more likely to be treated as members of their master's family. The migratory field hands who follow the wheat as it ripens from Texas to Hudson Bay are too sporadic to be effective strikers. Possibly not until industrial courts are established in all states will the full force of the Kansas idea be felt. It is doubtless as true today as when it was written, that "Whatever is best administered is best." If so, the success or failure of the Kansas law will depend not entirely, or so much upon the theories or principles underlying it, as it will upon the industry, character and tactfulness of the judges and their ability to placate the opposing forces.

To those who regard the new Act as revolutionary, it is a kind of Magna Charta extorted from the industrial barons and labor czars by the other nine-tenths of society and settles for all time the paramount right of society over industry. In the estimation of many of its labor opponents, the killing or throttling of strikes sounds the death knell of labor's most effective weapon, without which the progress of working people is stopped, while to others who condemn strikes, it cuts from the neck of the laborer a mill stone which has frequently kept him submerged in pauperism and crime, to say nothing of the lash of the labor leader. While organized labor is not extensive in Kansas, it may be contended that the small Kansas area wherein the miners are highly organized is ideal in its proportions for such an experiment, and though the time is not yet ripe to predict the outcome in Kansas, it is interesting to note that, while most of the opposition to the establishment of the Court probably came from organized labor, rather than capital,<sup>13</sup> it is labor and not capital which seems to be making the far greater number of appeals to the Court for the settlement of labor disputes. Moreover, the tendency on the part of employees to organize seems to have been stimulated by the

---

<sup>13</sup> Wm. M. Duffus, *AMERICAN ECONOMIC REVIEW*, June, 1920, page 411.

new Act, by reason of the frank recognition which it gives to such organizations.

According to one authority, such an act will lead to the growth of extra-judicial bodies. "From the time that the legislature allowed the conditions of service to become a matter of free contract, neither employers nor workmen have ever been induced to make use of the judicial machinery provided for them, but they have always preferred to form voluntary tribunals of their own."<sup>14</sup> Clearly, there is nothing in the new Kansas Act which prevents the organization of shop committees or resorts to voluntary arbitration. Moreover, if the Kansas Act results in the adjustment of labor disputes by such voluntary methods, it will have been a success far beyond the expectations of many of its most ardent advocates, to say nothing of the relief to the taxpayers who now must needs pay the bills of the Kansas Industrial Court.

In conclusion, it may be said that if, to any high degree, the new Court is a success, it means that Kansas has evolved a solution of a problem which has vexed society, if not from the time when Adam began to delve for himself, at least from the day when one man worked for another. If Governor Allen's industrial code puts an end to the conflict between capital and labor, he deserves to rank higher as a lawgiver than Napoleon, and Kansas, in the domain of legislative innovation, has a secure place in the sun.

H. W. HUMBLE.

*University of Kansas Law School.*

---

<sup>14</sup> PALGRAVE, *Op. Cit.*, Vol. 3, page 481.